United Nations CRC/C/OPSC/IND/CO/1

Convention on the Rights of the Child

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Committee on the Rights of the Child

Concluding observations on the report submitted by India under article 12, paragraph 1, of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography*

1. The Committee considered the initial report of India (CRC/C/OPSC/IND/1) at its 1885th and 1886th meetings (see CRC/C/SR.1885 and 1886), held on 2 and 3 June 2014, and adopted, at its 1901st meeting, held on 13 June 2014 the following concluding observations.

I. Introduction

2. The Committee welcomes the submission of the State party's initial report and its written replies to the list of issues (CRC/C/OPSC/IND/Q/1/Add.1) and appreciates the constructive dialogue held with the State party's multisectoral delegation.

3. The Committee reminds the State party that the present concluding observations should be read in conjunction with the concluding observations on the State party's combined third and fourth periodic report under the Convention on the Rights of the Child (CRC/C/IND/CO/3-4) and those on the State party's initial report under the Optional Protocol on the involvement of children in armed conflict (CRC/C/OPAC/IND/1), adopted on 13 June 2014.

II. General observations

Positive aspects

4. The Committee notes with appreciation the State party's ratification of:

(a) The Convention against Transnational Organized Crime; the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children; and the Protocol against the Smuggling of Migrants by Land, Sea and Air, which supplement the Convention against Transnational Organized Crime, in May 2011;

* Adopted by the Committee at its sixty-sixth session (26 May–13 June 2014).

(b) The Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, in June 2003;

(c) South Asian Association for Regional Cooperation Convention on Preventing and Combating Trafficking in Women and Children for Prostitution, in 2002.

5. The Committee welcomes the various measures taken by the State party in areas relevant to the implementation of the Optional Protocol, including the adoption of:

(a) The Criminal Law (Amendment) Act, 2013, which strengthens protection of children against trafficking;

(b) The Protection of Children from Sexual Offences Act, 2012;

(c) The Information and Technology (Amendment) Act, 2008;

(d) The Juvenile Justice (Care and Protection of Children) Amendment Act, 2006.

6. The Committee further welcomes the progress achieved in the creation of institutions and the adoption of national plans and programmes that facilitate the implementation of the Optional Protocol, including:

(a) The National Policy for Children, 2013;

(b) The Guidelines Governing the Adoption of Children, 2011;

(c) The Protocol on Prevention, Rescue, Repatriation and Rehabilitation of Trafficked and Migrant Child Labour, 2008;

(d) The Comprehensive Scheme for Prevention of Trafficking and Rescue, Rehabilitation, Re-integration and Repatriation of Victims of Trafficking and Commercial Sexual Exploitation, 2007;

(e) The Protocol for Pre-Rescue, Rescue and Post-Rescue Operations of Child Victims of Trafficking for Commercial Sexual Exploitation, 2005;

(f) The establishment of 225 Anti-Human Trafficking Units;

(g) The creation of the Central Advisory Committee on Combating Child Prostitution.

III. Data

Data collection

7. While noting that the State party has developed a child-tracking system for missing children, the Committee is concerned about the lack of a comprehensive system to collect data on all offences under the Optional Protocol, as envisaged in the Integrated Child Protection Scheme launched in 2009-2010, which would enable the State party to identify the extent and the forms of sale of children, child prostitution and child pornography. The Committee also regrets the very limited statistics available, for instance through the National Crime Records Bureau, on offences covered under the Optional Protocol.

8. **The Committee urges the State party to:**

(a) Develop and implement a comprehensive and systematic mechanism for data collection, analysis, monitoring and impact assessment of all the areas covered by the Optional Protocol;

(b) Ensure that data are systematically collected on all crimes covered by the Optional Protocol, and on children in vulnerable situations who are at risk of becoming victims of such crimes. The data should be disaggregated by, inter alia, sex, age, national and ethnic origin, state or autonomous region, rural or urban residence, indigenous and socioeconomic status, with particular attention to children living in the most vulnerable situations;

(c) Ensure that data are also collected on the number of prosecutions and convictions, disaggregated by the nature of the offence;

(d) Analyse and use the data collected as a basis for designing policies to implement the Optional Protocol, assessing progress achieved towards this objective and for the purposes of prevention;

(e) Establish a system of common indicators for collecting data on the various states and union territories.

IV. General measures of implementation

Legislation

9. While commending the State party for the numerous laws adopted in relation to the Optional Protocol, including the Criminal Law (Amendment) Act, 2013, which strengthens protection of children against trafficking, and the Protection of Children from Sexual Offences Act, 2012, which strengthens protection of children against sexual assault, sexual harassment and use of child pornography, the Committee is concerned that the domestic legislation does not fully incorporate all the offences covered by the Optional Protocol and is not harmonized as regards the prohibition and criminalization of these crimes. The Committee is also concerned that efforts have focused mainly on trafficking without due regard to other offences covered by the Optional Protocol, in particular sale of children and child pornography.

10. **The Committee urges the State party to continue its efforts to harmonize domestic legislation with the Optional Protocol. In particular, the Committee recommends that the State party, in accordance with its obligation under articles 1, 2 and 3 of the Optional Protocol, define and prohibit all cases of sale of children, a concept which is similar, but not identical to, trafficking in persons, child prostitution and child pornography.**

National plan of action

11. The Committee appreciates the adoption of various plans and strategies relating to the sale of children, child prostitution and child pornography, including the new National Policy for Children, in 2013, which covers the offences under the Optional Protocol under the priority area of protection and which should guide and inform all laws, policies, plans and programmes affecting children. However, the Committee regrets that a comprehensive national plan of action to operationalize the Policy has not yet been adopted.

12. **The Committee recommends that the State party develop a national action plan for the implementation of the Convention, which includes a separate plan or section with clear targets and indicators specifically addressing all issues covered by the Optional Protocol, and provide it with adequate human, technical and financial resources for its implementation. To that end, the State party should pay particular attention to the implementation of all the provisions of the Optional Protocol, taking into account the Declaration and Agenda for Action adopted at the First World Congress against Commercial Sexual Exploitation of Children, held in Stockholm in**

1996, and the Global Commitment made and renewed at the First, Second and Third World Congresses against Commercial Sexual Exploitation of Children held in Stockholm in 1996, Yokohama, Japan, in 2001 and Rio de Janeiro, Brazil, in 2008.

Coordination and evaluation

13. The Committee welcomes the strengthening of the authority and the coordinating role of the former Department of Women and Child Development by upgrading it to the full-fledged Ministry of Women and Child Development with increased financial and human resources. However, the Committee is concerned that those measures have not yet led to better coordination among ministries and departments at all levels to implement policies and programmes relating to children, nor to evaluate the implementation.

14. **The Committee recommends that the State party reinforce coordination among the various agencies and committees working on developing and implementing child rights policies and ensure that the Ministry has sufficient authority and adequate human, financial and technical resources to effectively coordinate the implementation of the Optional Protocol across different sectors and at the national, provincial and district levels. The Committee also recommends that the State party undertake periodic monitoring and evaluation of the measures taken, in order to use the results of such evaluation for further development of strategies and policies for all areas covered by the Optional Protocol.**

Dissemination and awareness-raising

15. While noting that the State party has carried out awareness-raising activities, such as developing a communication strategy on prevention of trafficking of children for commercial sexual exploitation, the Committee is concerned at the lack of systematic and comprehensive activities aimed at raising awareness of and disseminating the Optional Protocol in the State party, which has contributed to a low level of understanding and awareness among the public in general, as well as children and professionals working with and for children.

16. **The Committee recommends that, further to article 9, paragraph 2, of the Optional Protocol, the State party make the provisions of the Optional Protocol widely known among the public, particularly among all professionals working with and for children, including through appropriate media and educational campaigns, programmes and training focusing on, among others, preventive measures and the harmful effects of all the offences covered therein.**

Training

17. While noting the State party's efforts to build the capacity of professional and para-professional groups working with and for children, such as the initiation of a two-year training project for law enforcement personnel on human trafficking, the Committee is concerned that the relevant professionals, in particular the police and those working with the administration of justice, have not received sufficient training on the provisions of the Optional Protocol; all the offences under the Optional Protocol have not been adequately covered in the training; and there is very limited systematic effort to build the capacity of professionals in remote areas.

18. **The Committee recommends that the State party:**

(a) Develop multidisciplinary training programmes through a participatory process, involving communities and other stakeholders, on all areas covered by the Optional Protocol. Such training should be carried out regularly and provided to all

relevant professional groups, ministries and institutions working with and for children, including in remote areas;

(b) Conduct regular assessments of the training provided to judges, law enforcement personnel, in particular the police, and other professionals working with and for children to ensure that they can effectively translate their knowledge and skills into practice in order to protect children from the offences covered under the Optional Protocol.

Allocation of resources

19. While noting the information provided by the State party on the overall budget provision for child-specific schemes, the Committee is concerned about the very low budget allocations to child protection and the negative impact of mismanagement of funds and corruption on the implementation of the Optional Protocol. The Committee also regrets the lack of identifiable budget allocations for activities to implement the Optional Protocol.

20. **The Committee recommends that the State party ensure that sufficient and targeted resources are allocated for the effective implementation of all the provisions of the Optional Protocol at the national, regional and district levels, by providing, in particular, the necessary human, technical and financial resources for the development and implementation of programmes aimed at the prevention, protection, physical and psychological recovery and social integration of victims, as well as the investigation and prosecution of the offences covered by the Optional Protocol. The Committee also recommends that the State party take all necessary measures to prevent and combat corruption.**

V. Prevention of the sale of children, child prostitution and child pornography (art. 9 (1 and 2) of the Optional Protocol)

Measures adopted to prevent offences prohibited under the Protocol

21. The Committee notes the State party's efforts to prevent offences covered by the Optional Protocol. However, the Committee regrets that preventive measures remain inadequate and fragmentary, in particular in relation to the prevention of child prostitution and child pornography. In particular, the Committee is concerned about:

(a) The inadequacy of the mechanisms in place to detect, identify and monitor children at risk of becoming victims of the offences under the Optional Protocol, such as children from scheduled castes and scheduled tribes, children deprived of their family environments, children in street situations, children subject to child marriages and children of sex workers;

(b) The insufficiency of measures taken to address the root causes and contributing factors that lead to the vulnerability of children in relation to the offences under the Optional Protocol, such as gender discrimination, cultural stereotypes, poverty, displacement and unsafe migration;

(c) The prevalence of culturally sanctioned harmful practices, such as the practice of devadasi or bride purchasing;

(d) The inadequate protection of boys and intersex children from sexual abuse and exploitation;

(e) The lack of information both in the report and during the dialogue, on programmes aimed at preventing the illegal transfer of organs of children for profit, sale of

children and the engagement of children in child prostitution and child pornography, and on the impact of such programmes.

22. **The Committee urges the State party to:**

(a) Establish effective mechanisms to identify and monitor children at risk of becoming victims of the offences under the Optional Protocol;

(b) Carry out research on the nature and extent of the sale of children, child prostitution and child pornography, in order to identify the root causes and their extent, and adopt a comprehensive and targeted approach to address all the offences under the Optional Protocol;

(c) Strengthen its efforts to eliminate culturally sanctioned harmful practices that amount to the sale of children, paying particular attention to groups of children who are in the most vulnerable situations;

(d) Ensure that prevention strategies incorporate key actions to address protection of boys and intersex children from sexual abuse;

(e) Strengthen technical cooperation with, inter alia, UNICEF and other international organizations and agencies in view of more effective prevention in the areas covered by the Optional Protocol.

Adoption

23. The Committee notes the measures taken by the State party to protect children from unlawful adoption, including the issuance of the Guidelines Governing the Adoption of Children, in 2011, aimed at preventing illegal adoption. However, the Committee is concerned that children are still not sufficiently protected from unlawful adoption, a situation which may give rise to the sale of children for adoption purposes. The Committee is particularly concerned at:

(a) The ongoing practice of unregulated informal adoption in the State party;

(b) The stealing of babies from hospitals and the lack of information on measures taken by the State party to prevent the stealing and abandonment of babies in general and to address its root causes, as well as on any applicable sanctions for stealing and possible sale of children;

(c) The lack of information on the whereabouts of children left at the Cradle Baby Reception Centres;

(d) The extent of fraudulent birth registration in the State party and the lack of adequate efforts to prevent it;

(e) Insufficient legal or policy measures to prevent intermediaries from attempting to persuade biological families to give up their children for adoption;

(f) The lack of information on prohibition of illegal adoption, the requirement of regulating licences for adoption agencies and the regulation of fees;

(g) The widespread commercial use of surrogacy, including international surrogacy, which is violating various rights of children and can lead to the sale of children.

24. **The Committee urges the State party to:**

(a) Develop and implement policies and laws to guarantee that all cases of adoption are in full conformity with the Optional Protocol and the principles and

provisions of the 1993 Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption;

(b) Take all necessary measures, including establishing an effective monitoring system, to prevent the stealing of babies from hospitals and the abandonment of infants in cradle centres, fraudulent birth registration and intermediaries from attempting to persuade mothers to give up their children for adoption, as well as ensure that such practices are adequately sanctioned;

(c) Explicitly prohibit illegal adoption and develop a programme to prevent illegal intercountry and international adoptions;

(d) Effectively regulate the licensing and monitoring of agencies, as well as the fees that they charge for their various services;

(e) Follow up adoptions, as appropriate, in order to prevent children from being exploited;

(f) Ensure that the Assisted Reproductive Technology Bill and other future legislation contain provisions which define, regulate and monitor the extent of surrogacy arrangements and criminalizes the sale of children for the purpose of illegal adoption.

Child sex tourism

25. While welcoming the State party's efforts to combat child sex tourism, including through the adoption of a Code of Conduct for Safe and Honourable Tourism in 2010, the Committee is concerned about reports of child sex tourism, sexual exploitation of children at religious pilgrimage sites, in the context of "massage parlours" and "health spas", and other related issues occurring in various areas of the State party.

26. **The Committee urges the State party to:**

(a) Establish and implement an effective regulatory framework and take all necessary legislative, administrative, social and other measures to prevent and eliminate child sex tourism;

(b) Take all necessary measures to ensure that cases of child sex tourism are investigated and that alleged perpetrators are prosecuted and duly sanctioned;

(c) Reinforce advocacy with the tourism industry on the harmful effects of child sex tourism; widely disseminate the World Tourism Organization Global Code of Ethics for Tourism, and the provisions of the Optional Protocol, including information on legal sanctions among travel agents and tourism agencies;

(d) Encourage those enterprises to become signatories to the Code of Conduct for the Protection of Children from Sexual Exploitation in Travel and Tourism;

(e) Ensure that data on sex tourism and cases of child pornography are systematically collected and disaggregated by, inter alia, sex, age, national and ethnic origin, state or autonomous region, rural or urban residence and type of victimization, and establish a surveillance system, including cyber surveillance, to detect online pornography.

VI. Prohibition of the sale of children, child pornography, child prostitution and related matters (arts. 3, 4 (2 and 3), 5–7)

Existing criminal or penal laws and regulations

27. The Committee welcomes the efforts made by the State party to ensure compliance of its legislation with the provisions of the Optional Protocol. However, the Committee notes with concern that, despite the incorporation of some of the provisions of the Optional Protocol into national laws, domestic legislation is still not fully in compliance with the Optional Protocol, nor is the legislation fully implemented. In particular, the Committee notes with concern that:

(a) The Penal Code fails to provide a specific and comprehensive definition of sale of children and child prostitution and to criminalize the offering, obtaining, procuring or providing of a child for child prostitution;

(b) The Criminal Law (Amendment) Act, 2013, provides a definition of trafficking in persons whereby an element of force or other forms of coercion, abduction, fraud and deception is required, including in the case of children, and it does not expressly exempt victims of trafficking from criminal prosecution.

28. **The Committee recommends that the State party revise its penal legislation and bring it into full compliance with articles 2 and 3 of the Optional Protocol, and ensure that the law is effectively enforced in practice. In particular, the State party should:**

(a) Incorporate a comprehensive definition of child prostitution, in line with article 2 of the Optional Protocol;

(b) Criminalize the offering, obtaining, procuring or providing of a child for child prostitution;

(c) Amend the Penal Code with a view to removing the requirement of an element of force or other forms of coercion, abduction, fraud and deception when recruiting, harbouring, transferring, or receiving a child for the purpose of exploitation for it to be considered as trafficking;

(d) Expressly stipulate that child victims of the offences under the Optional Protocol are not considered as offenders.

Impunity

29. The Committee expresses deep concern that investigations and prosecutions of perpetrators of offences under the Optional Protocol are rare. In particular, the Committee is concerned about the inadequate capacity and, at times, the unwillingness of law enforcement officials to respond in a timely and child-friendly manner to address the violations of children's rights as protected under the Optional Protocol.

30. **The Committee urges the State party to:**

(a) Investigate and adequately punish all professionals, in particular law enforcement officials, who display dereliction of duty in addressing the offences covered under the Optional Protocol;

(b) Strengthen the capacity of all law enforcement authorities and the judiciary to detect and prosecute offences under the Optional Protocol through specialized training;

(c) Provide specific information on investigations, prosecutions and punishments of perpetrators of offences under the Optional Protocol in its next periodic report.

Extraterritorial jurisdiction and extradition

31. While noting that the State party exercises extraterritorial jurisdiction in cases where Indian citizens commit an offence outside Indian territory, the Committee regrets that jurisdiction over offences under the Optional Protocol necessitates double criminality. The Committee also notes that the State party did not provide any concrete information on whether the Optional Protocol may be used as a tool for extradition of persons suspected for violating the provisions thereof.

32. **The Committee recommends that the State party take steps to ensure that domestic legislation enables the establishment and exercise of extraterritorial jurisdiction in all cases covered by article 4 of the Optional Protocol, including extraterritorial jurisdiction without the criterion of double criminality. The Committee further recommends that the State Party consider availing itself of article 5 of the Optional Protocol as a legal basis for extradition.**

VII. Protection of the rights of child victims (arts. 8 and 9 (3 and 4))

Measures to protect the rights of child victims

33. While the Committee notes the information provided by the State party on a number of measures adopted to protect the rights and interests of child victims of offences prohibited under the Optional Protocol, the Committee is concerned that:

(a) Information on access to complaint mechanisms and adequate procedures to seek compensation for damages from those legally responsible is lacking;

(b) Child-sensitive procedures, such as video conferencing in judicial processes and child-sensitive spaces, are rarely available;

(c) Child victims are not sufficiently provided with legal assistance or with the support of child psychologist and social workers during the criminal justice process;

(d) Child victims are, at times, treated as offenders.

34. **The Committee urges the State party to strengthen measures to protect the rights and interests of child victims of the offences prohibited under the Optional Protocol at all stages of the criminal justice and any accountability process. In particular, the Committee urges the State party to ensure that:**

(a) Complaint mechanisms are easily accessible and available to children whose rights may have been violated and advice and counselling are provided;

(b) Child-sensitive procedures are established and followed and the best interests of the child are given primary consideration in the treatment afforded by the criminal justice system to child victims and witnesses;

(c) All professionals receive training on child-friendly interaction with child victims and witnesses at all stages of the criminal and judicial process, in accordance with article 8, paragraph 1, of the Optional Protocol and the Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime (Economic and Social Council resolution 2005/20, annex);

(d) Adequate technical and financial resources are provided to enable law-enforcement authorities, prosecutors and judges to apply child-friendly procedures, including interview rooms designed for children, comprehensive support services for child victims in one spot, modified court environments and a reduced number of court appearances of child victims;

(e) Qualified, independent, free or subsidized legal and other appropriate assistance is available to all victims of offences under the Optional Protocol;

(f) Child victims receive the support of child psychologists and social workers during the process;

(g) All child victims have access to adequate procedures to seek, without discrimination, compensation for damages from those legally responsible, in accordance with article 9, paragraph 4, of the Optional Protocol.

Recovery and reintegration of victims

35. The Committee welcomes the efforts made by the State party to develop support services for child victims of trafficking, including the adoption of the Protocol on Pre-Rescue, Rescue and Post-Rescue Operations of Child Victims of Trafficking for Commercial Sexual Exploitation (2005) and the Protocol on Prevention, Rescue, Repatriation and Rehabilitation of Trafficked and Migrant Child Labour (2008). The Committee is nevertheless concerned that the State party's recovery and reintegration measures are limited and do not adequately take into account the needs of child victims of all offences covered under the Optional Protocol. The Committee is particularly concerned at:

(a) The lack of adequate facilities;

(b) The lack of a method of accreditation for the registration of institutions, and the lack of adequate counselling services and psychological support tailored to the needs of children;

(c) Inadequate standards of care, supervision and commitment in institutions;

(d) The lack of effective provisions for regular review and re-consideration of the child's placement in an institution;

(e) Limited re-integration assistance for victims, once they leave an institution.

36. **The Committee urges the State party to take all appropriate measures for the physical and psychological recovery and social reintegration of child victims of offences under the Optional Protocol and ensure that those measures are provided in an environment that fosters the self-respect and dignity of the child. In particular, the Committee recommends that the State party:**

(a) Establish mechanisms and infrastructure for providing recovery and rehabilitation support to child victims of all offences under the Optional Protocol, and ensure adequate financial and technical support;

(b) Take all necessary measures, including by considering the provision of training to medical professionals on recognizing and treating victims of offences under the Optional Protocol, to ensure that child victims of the offences under the Optional Protocol are provided with appropriate care, assistance and counselling, including specifically for their full social reintegration and physical and psychological recovery;

(c) Ensure that effective measures are adopted for the regular review and re-consideration of a child's placement in an institution;

(d) Ensure reintegration for those leaving institutions, including by taking all necessary measures to locate their families and ensure family reintegration;

(e) Strengthen technical cooperation with UNICEF and the International Organization for Migration in the implementation of these recommendations.

VIII. International assistance and cooperation (art. 10)

Multilateral, bilateral and regional agreements

37. In the light of article 10, paragraph 1, of the Optional Protocol, the Committee encourages the State party to continue to strengthen international cooperation through multilateral, regional and bilateral arrangements, especially with neighbouring countries, including by strengthening procedures and coordinating mechanisms for the implementation of such arrangements, with a view to improving prevention, detection, investigation, prosecution and punishment of those responsible for offences covered under the Optional Protocol.

IX. Follow-up and dissemination

Follow-up

38. The Committee recommends that the State party take all appropriate measures to ensure that the recommendations in the present concluding observations are fully implemented by, inter alia, transmitting them to the relevant Government ministries, Parliament and national and local authorities, for appropriate consideration and further action.

Dissemination of concluding observations

39. The Committee recommends that the initial report and written replies submitted by the State party and the present concluding observations be made widely available, including, but not exclusively, through the Internet, to the public at large, civil society organizations, youth groups, professional groups and children, in order to generate debate and awareness of the Optional Protocol, its implementation and monitoring.

X. Next report

40. In accordance with article 12, paragraph 2, the Committee requests the State party to include further information on the implementation of the Protocol in its next periodic report under the Convention on the Rights of the Child, in accordance with article 44 of the Convention.